In Re: Infoquest Software Exports

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SooperKanoon Citation : sooperkanoon.com/57744

Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Jul-09-2004

Judge : A Batra

Appellant : In Re: Infoquest Software Exports

Judgement :
1. M/s Infoquest Software Exports Ltd. (hereinafter referred to as "ISEL") came out with a public issue of 43,18,800 equity shares of Rs. 10/- each for cash at par aggregating to Rs. 431.88 lacs. The public issue opened on April 15, 1996 and closed on April 18, 1996. The shares of the company are listed at the stock exchanges at Bombay, Ahmedabad, Jaipur and Madhya Pradesh stock exchanges.

2. SEBI had received several complaints from investors, alleging inter alia that applications had been made after the closure of the issue, the registrar had wrongly rejected the valid applications, the share price of ISEL was being rigged, etc.

3. In view of the above, Chairman SEBI, vide order dated June 28, 1996, ordered investigations into the alleged irregularities in the public issue of ISEL. The alleged role of the company, its promoters, a group of financiers and brokers relating to manipulation of the market was examined. Information was gathered from various investors as well as the brokers, promoter / directors of the ISEL in the course of investigation.

4. Based on the findings thereon, a show cause notice dated June 18, 2003, was issued to Shri V.K. Jatia and his family members namely Shri Shubhkaran Jatia, Smt. Shashi Jatia, Smt. Rampyari Devi Jatia, Smt.

Smita Jatia, Smt. Archna Jatia & Smt. Nita Jatia (hereinafter jointly referred to as "his family members") whereby violation of Regulation 3 and clause (a) of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 was alleged against them. Vide the said notice, they were also asked to show cause as to why appropriate directions under Regulations 11 & 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, read with Sections 11 and 11B of SEBI Act, 1992 should not be passed against them..

5. A reply to the said notice was received vide letter dated July 14, 2003, from Shri V.K. Jatia, replying for himself and on behalf of four of his family members. In the said reply, he had submitted that on the date of the closure of the public issue of ISEL, he and his family members had entered into an agreement with M/s Arihant Finance Corporation (hereinafter referred to as "AFC") for a financing arrangement for Rs. 70 lakhs and that their role was purely that of financiers and not of investors. It was also stated that their application for shares was only to secure repayment of the said loan made to AFC and not for any other reason whatsoever. Copies of the agreements entered into, with AFC, were also forwarded by him. It was further submitted that as per clause 5 of the agreement, the shares were pledged to him and his family members by AFC, only to secure the financial arrangement; as per clause 11 of the agreement, AFC was the beneficial owner of the shares allotted and further, as per clause 6 of the agreement, in the event of the shares being allotted to him and his family members, the same were to be transferred back to AFC, upon receipt of the amount invested, along with the interest, from AFC. He also submitted that they had not invested any amount to make profit, but had financed to earn an interest on the amount that was deployed by them. It was submitted that they had applied for the shares of ISEL in their name, as suggested by AFC, to secure the repayment of the loan and not in connivance with anyone to obtain predated stock invest from the banks and/or for applying in the public issue of ISEL, after its closure. He also denied having

financed the issue by applying for large quantities of shares through stock invests, fraudulently obtained, with a view to create an appearance of huge over subscription. It was denied that there was any assured allotment and cornering of the shares thereby. He also denied the allegation of them having connived with Shri Dilip Dalal, to manipulate the market, to the detriment of the interest of the investors and the capital market. He also stated that they had not effected, taken part in, or entered into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person. He submitted that they have not committed any fraud and that they have not misappropriated any fund or made any profit /gain from dealing in securities. Further, he requested SEBI to pardon them for their ignorance, innocence and unintentional acts.

6. An opportunity of hearing was granted before me on September 10, 2003, to Shri Jatia and his family members. On the said date, Shri Vinod Jatia and Shri Anil Kedia appeared before me. Oral submissions were made, denying the allegations leveled against them.

7. I have carefully examined the investigation report, the Show Cause Notice issued to Shri Jatia and his family members, their reply and the submissions made during the hearing. I have noted that no reply has been received from Shashi Jatia and Smt. Archana Jatia. However, I would like to proceed against them on the basis of the documents available in the file, especially in view of the fact that a common show cause notice was issued to all the seven entities, with the allegations being made against them as a group and not as individuals.

8. My findings with respect to the alleged irregularities in the public issue and more specifically, the alleged role of Shri Jatia and his family members are as under.

9. On an examination of the top allottees of the shares of ISEL, I find that the top 100 applicants have applied for 3,08,10,000 equity shares, amounting to Rs.15,40,50,000, which is nearly 50% of the total subscription collected. On scrutiny of the list of top 100 applicants, I have seen that 80 applications were made from 8 addresses, the details of which are given below: C/o Rajesh N. Jhaveri, Jhaveri Building, Opp. Bank of India, Manek Chowk, Ahmedabad C/o

Suresh Kumar, 7 Sunrise Park, Row House, Opp. Drive In Cinema, Thaltej, Ahmedabad C/o Secretarial Dept. Empire House, S.B. Marg, Lower Parel, Bombay 400009 * The address at S. No. 6 above is the address of Shri Jatia and his family members.

10. During the investigation, statements of various entities associated with the said issue viz ISEL's directors, brokers, financiers, registrar to the issue, merchant banker, as also of the persons who had arranged the finance, acting as intermediary between the allottees and financiers, etc, were recorded. On the basis of the statements recorded, I find that a significantly large number of allottees had applied in the public issue on the basis of a pre-meditated arrangement entered into, between the financiers and the persons acting on behalf of ISEL, which led to huge over subscription in the issue. This in turn appears to have created a false and misleading impression on the investors, regarding the high level of interest in the issue/company, which may have induced further interest of investors in the shares of the company, thereby leading to price rise in the scrip, post listing.

11. My observations on the modus operandi adopted in the public issue of ISEL are as follows:- 11.1 One Shri Devendra Kantilal Shah alias Munna of/acting on behalf of one M/s Arihant Finance Corporation, was involved in the business of financing public issues and in case of shortfall of funds, funds were borrowed from the market. He has confirmed that he was involved in the financing of the public issue of ISEL and that he was the negotiator between the financiers and the directors of ISEL. In his statement he has submitted that that the practice in cases of such kind was that an agreement is entered into with clients who approach for financing of the issue; the interest rate is agreed upon right at the beginning and the shares allotted are subject to buy-back, though the interest is received on full amount of application and the interest income is subject to income tax.

11.2 In this particular case, Shri D.K. Shah had confirmed on oath before the investigating officials that he was involved in financing the public issue of ISEL. He had submitted that he had financed the subscription to the extent of Rs 9 Crores, at the behest of one M/s Divya Jyoti Securities Ltd. The applications for this amount were made by various groups of financiers, namely D.K. Dalal, Vinod Kumar Jatia, Thakkar Family, Vohra Family, Shah Family, Modi Family, Acharya family and were arranged after the closure of the issue. Shri Shah stated that the financiers who put in the applications had arranged for the stock invests for applying in the issue and they were paid interest at a flat rate from the date of the issue till allotment. Shri D K Shah was himself able to garner allotment worth Rs 57 lacs, for which he had received back the money invested as subscription and interest at the rate of 36% was charged and the remaining amount was refunded.

11.3 The aforesaid applications, along with the respective stock invests, were admittedly handed over by Shri D K Shah to M/s Divya Jyoti Securities Ltd. It is also pertinent to note that either these "investors" never received the share certificates for the shares allotted to them or they have, on receipt of the share certificates, signed blank transfer deeds and handed them over to the person/persons who had approached them for the financing of the issue, after receiving the principal and interest amounts owed to them.

11.4 The financiers, in their statements, confirmed that they were approached by Shri D.K. Shah alias Munna of Arihant Finance Corporation, a big time financier of public issues, or persons acting on his behalf, to finance the public issue of ISEL.

11.5 I also find that the stock invests accompanying the applications of most of these financiers were issued after the closure of the issue.

In reply to the investigating team's query as to how is it possible that the stock invests issued on May 18, 1996 could be deposited before the closure of the issue on April 18, 1996, Shri D K Shah had submitted that he had given all the forms and stock invests to Divya Jyoti persons and was not aware how they were deposited after the closure of the issue. In reply to whether all the applicants have received the share certificates, Shri D.K Shah had stated that the allotment money, along with interest, have been paid to the applicant, and till date no one has enquired about the shares.

12. On perusal of the investigation report, I also find that a group of entities, such as Shri Deep Trivedi/ Divya Jyoti Securities Ltd. and Shri D.K. Shah etc, arranged

for financing of the public issue of ISEL and in connivance with the promoters of the issuer company, manipulated the public issue allotment of ISEL. Various financiers, as mentioned in the above paragraphs, in the pretext of being genuine investors, had connived along with these entities.

13. I also find that the financing of the issue was done by M/s Divya Jyoti Securities Ltd., on behalf of the promoters/directors of ISEL.

The basis of presumption by me, on the relationship between M/s Divya Jyoti Securities Ltd., which sought financing of the issue and ISEL/Sanjay Jhalani, Director, ISEL is as follows:- i. The bank account of M/s Top Cassettes in which Shri Sanjay Jalani, the director of ISEL is one of the Directors maintained at Dena Bank, Indore was introduced by M/s Divya Jyoti Industries Ltd. of which Divya Jyoti Securities is a group concern.

ii. Perusal of account opening form of Top Cassettes and Divya Jyoti Securities Ltd., maintained at Dena Bank, Navlakha Branch, reveals that the account number of Top Cassettes is 2120 and that of Divya Jyoti Securities is 2121. These bank accounts were opened on the same day and introduced by the same person. The account of Top Cassettes maintained at Dena Bank was introduced by Director of Divya Jyoti Industries and the account of Divya Jyoti Securities was also introduced by the director of Divya Jyoti Industries. The handwriting on the Bank account opening form, especially in the address and the telephone column, appears to be the same for both the accounts. Telephone number 434506 appears in both the account opening forms and both the accounts have been verified by the same officer of the Bank, which means that the accounts were opened at the same time. The office of Top Cassettes belongs to Deep Trivedi and the telephone number of Top Cassettes and Divya Jyoti Securities Ltd., is common.

iii.Shri Rajesh Jhaveri, another "financier" of the issue, had stated on oath that he had paid an amount of Rs.60 lacs to D.K. Shah, of/acting on behalf of Arihant Finance Corporation, for the services rendered by him towards financing the public issue of ISEL.

This amount was paid by him on behalf of Deep Trivedi, director, Divya Jyoti Securities Ltd. The said amount was subsequently reimbursed to him by two drafts issued by Dena Bank, D.D. No. 805203, dated May 31, 1996 and D.D. No. 805238, dated June 5, 1996, amounting to Rs.30 lacs each, issued to the debit of Divya Jyoti Securities and Top Cassettes Ltd., respectively.

iv. The perusal of cash books/ bank books reveals cash withdrawal from the Bank accounts of ISEL even when the company had ample cash balances. In some situations the company has done cash withdrawal of few lacs, without any expenditure in the near future.

v. ISEL had made payments to Divya Jyoti Securities Ltd. on April 5, and April 9, 1996 just prior to the opening of the public issue of the company. The perusal of records of ISEL reveal that the company has given money to Divya Jyoti Industries Ltd. to the extent of Rs. 1,61,30,000, from May 22, 1996 to June 10, 1996. The money was in turn given to Divya Jyoti Securities Ltd., who in turn has utilized this money for purchases of ISEL shares during the aforesaid period, in Grey Market as well as in Secondary Market, as indicated by the bank account statements available with SEBI. vi. A payment of Rs.30,00,000/- was made by Divya Jyoti Securities Ltd. towards the purchase of Infoquest shares from Top Cassettes Ltd. vii. On perusal of account of Top Cassettes maintained at Dena Bank, Navlakha Chouraha, it appears that Top Cassettes have given financial assistance to Divya Jyoti Industries Ltd., who in turn has passed on the same to Divya Jyoti Securities Ltd. Shri Deep Trivedi of Divya Jyoti Securities Ltd. has used this money for buying the shares of ISEL and Top Cassettes Ltd. 14. I find that the investigation conducted by SEBI has also looked into and established the role of financiers of the public issue viz.

Shri Farookh Pavri, Shri D K Shah etc., who had together accounted for financing applications amounting to Rs. 9 crores in the issue of ISEL.

15. I find that Jatia and his family members were one such group of investors/financiers in the public issue of ISEL. Shri Jatia is the promoter/director of M/s Supreme Holdings, a company listed at BSE. It was stated during the investigation, by Shri Purushotham Ladha, the authorized representative of Shri

Jatia, as well as the Accounts Executive of M/s Supreme Holdings Ltd., that one Shri Dilip Dalal had approached Shri Jatia around May 10, 1996 (after closure of the issue) for financing the public issue of ISEL. Although the agreement entered into, in pursuance thereof, was between M/s Arihant Finance Corporation and the family members of Shri Jatia, the repayment of loan was done by M/s BK Finance. From the statements of Shri Purushottam Ladha, , I find the deal to be such that Rs.70 lacs was given as a loan @ 20% p.a. for 15 days by Shri Jatia and his family members and the interest earned on the stock invests was to be retained by them. I also find Shri. Jatia to have admitted to the investigating officials, that an amount of Rs 70 lacs had been given by him towards the public issue of ISEL. It was found that the applications were made through stock invests drawn on Bank of India, Cumballa Hill Branch. Shri V.K. Jatia and his family members were found to have signed the account opening forms of Bank of India and handed it over to the broker, Shri Dilip Dalal, who managed to get the stock invest issued from Bank of India, Cumballa Hill Branch. It was also seen that the stock invests were predated as of April 18, 1996, though the accounts from where the stock invests were purchased, were opened only on May 10, 1996. It was seen that on allotment, each applicant received 6,500 shares and an amount of Rs.65,000/- was deducted from the stock invests. The details of the repayment of the interest and the principal are given as under : 16. The principal of Rs.65,000/- per application was found to have been repaid by M/s B.K. Finance, from their account held at the Madhavpura Mercantile Co-op Bank Ltd. vide cheques no.949379 to 949385 on May 22, 1996. It was also found that, the interest of Rs.8,219/- per application was paid by M/s B.K. Finance, from their account at Madhavpura Mercantile Co op. Bank Ltd., vide cheques no.949362 to 949368 on May 15, 1996.

17. In addition to the above, I find that on May 14, 1996, one Shri Farookh Pavri of Mumbai had approached Shri V.K. Jatia for a further financing of Rs.50 lacs on behalf of M/s Arihant Finance Corporation of Ahmedabad. This was admitted to, by Shri Jatia. The terms of financing were found to have been agreed on the condition that five joint applications of Rs.10 lacs would be put in by each and that the first applicant would be the persons related to Arihant Finance Corporation and the second applicant would be the family members of Shri V.K.Jatia. It was seen that in order to ensure the repayment of loan, the address of correspondence was

given as the address of Shri V.K. Jatia.

The details of these joint applications are as follows: 18 These applications were also made through stock invests which were purchased from Bank of India, Cumballa Hill Branch. It was seen that in this case, the stock invests were issued from the bank accounts of the first applicants, which were opened in the last week of April 1996. It was seen that for these five applications, Jatia and their family members had invested Rs.9,35,000/- per application. It was seen that the balance of Rs.65,000/- was put in by the Arihant Finance Corporation and the payments were found to have been made by Mani Investments, of which Farookh Pavri is the Partner (another financier in the issue), on behalf of Arihant Finance Corporation.

19 As regards applications being accompanied by pre-dated stock invests, Shri Jatia had stated that they acted on the advice of their broker, Shri Dilip Dalal, who said that he could manage to get the pre dated stock invests from Bank of India, Cumballa Hill Branch. As mentioned above, although Jatia and his family members had opened the accounts only on May 10, 1996, the stock invests that accompanied their applications are found to have been purchased from the accounts opened on April 27, 1996 in their name. Thus, I find that the intention behind making applications on behalf of Jatia and his family members, although stated to be for financing purposes, was not bonafide. In that case, there need not have used predated stock invests. They could have made the applications before the closure of the issue itself.

20 I find that the applicants had been aware of the allotment to be made in response to their applications, even before they made the applications in the public issue. Further, I also find that, on receipt of the principal and interest repayment from the financiers and on receipt of the shares allotted to the applicants from the Registrars, the applicants signed the blank transfer deeds and handed over the share certificates and the transfer deeds to Dilip Dalal and Farookh Pavri, respectively.

21 In order to look into the use of pre-dated stock invests by Shri Jatia and his family members, the investigation team approached Bank of India. Shri Kaku, who

was the Chief Manager of Bank of India, Cumballa Hill Branch, Bombay, at the time of issue of these stock invests, had deposed before the investigating officials. He confirmed that the stock invests issued to the members of Jatia family, among others, were predated. On perusal of the bank records, it was observed that the money was debited from the accounts of the holders of these stock invests before the endorsement by the Registrar, thereby making the amount available or the lien fall below the amount for which the stock invests were issued. I also find that Shri Kaku stated that the respective parties showed him the basis of allotment and on that basis proportionate amount was allowed to be released. He also stated that on the presumption that the bank was having the security of the reduced liability, as per the basis of allotment, he allowed the withdrawal of money.

22 From the above, I find that Shri Jatia and his family members had financed the public issue by applying for large quantity of shares (around 12,00,000 shares), through stock invests fraudulently obtained, with a view to create an appearance of huge over subscription, and also received assured allotment, thereby cornering the shares.

23 Jatia and his family members had opened the accounts only on May 10, 1996 and the stock invests that accompanied their applications are found to have been purchased from the accounts opened on April 27, 1996 in their name. This shows that the intention behind making applications on behalf of Jatia and his family members, although stated to be for financing purposes, was not bona fide. In that case, they need not have used predated stock invests. They could have done the same before the closure of the issue itself.

24 I note that Jatia and his family members had acted in such a manner so as to create a false impression of over subscription to the public issue of ISEL, which in turn appears to have created a false and misleading impression on the investors, regarding the high level of interest in the issue/company, which may have induced further interest of investors in the shares of the company, thereby leading to investor interest in the scrip, post listing.

25 This act on the part of Shri Jatia and his family is considered to be detrimental to the interest of investors in the securities market.

This was clearly a fraud perpetrated on the investors and in violation of Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. I am of the view that continuance of such persons in the market would be detrimental to the health of the securities market.

26 In view of the above and in exercise of the powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 11 of SEBI (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Markets) Regulations, 2003 and Section 11 And 11B of the SEBI Act, I hereby prohibit Shri V.K. Jatia & his family members, Shri Shubhkaran Jatia, Smt. Shashi Jatia, Smt. Rampyari Devi Jatia, Smt.

Smita Jatia, Smt. Archna Jatia & Smt. Nita Jatia from buying, selling or dealing in securities for a period of 18 (eighteen) months.